

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29/01/2020

DATED : 28.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 17128, 17134 & 17136 of 2019

And

W.M.P.Nos. 16683, 16684 & 16685 of 2019

M/s. Cee Dee Yes Health Care Services Pvt. Ltd.,
(Formerly known as CEE Dee Yes Standard Towers Pvt Ltd.,)
Rep. by its Managing Director,
No.383, Velachery - Tambaram Road
Velachery
Chennai - 600 042. ... Petitioner in W.P.No. 17128/2019

CYNTHIA K THELEEPAN
D/o. C.Devadasa Sundaram
Flat No.4, Indira Apartments
No.3, 12th Cross Street,
Indira Nagar,
Chennai - 600 020 ... Petitioner in W.P.No. 17136/2019

C.DEVADASA SUNDARAM
Son of Chidambara Nadar
No.25, Second Avenue, Adayar,
Chennai - 600 020 ... Petitioner in W.P.No. 17134/2019

Versus

1. The Reserve Bank of India
Fort Glacis
No.16, Rajaji Salai
Chennai - 600 001.
2. IndusInd Bank Ltd.,
Old No. 115m 116, New No. 34,
G.N. Chetty Road,
T.Nagar,
Chennai - 600 017. ... Respondents in all W.Ps.

PRAYER IN W.P.No. 17128/2019:Petition under Article 226 of the
Constitution of India, praying for the issue of a Writ of
Mandamus directing the first respondent herein to enquire into

the petitioner's complaints dated 27.05.2019 and 28.05.2019 with regard to the classification of the petitioner's Loan Account No. 514003464863 as Non Performing Assets (NPA) by the second respondent contrary to the Guidelines issued by the RBI/the first respondent herein and thereby to take necessary action against the second respondent herein.

PRAYER IN W.P.No. 17136/2019:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the first respondent herein to enquire into the petitioner's complaints dated 27.05.2019 and 28.05.2019 with regard to the classification of the petitioner's Loan Account No. 516003433658 as Non Performing Assets (NPA) by the second respondent contrary to the Guidelines issued by the RBI/the first respondent herein and thereby to take necessary action against the second respondent herein.

PRAYER IN W.P.No. 17134/2019:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the first respondent herein to enquire into the petitioner's complaints dated 27.05.2019 and 28.05.2019 with regard to the classification of the petitioner's Loan Account No. 516003438127 as Non Performing Assets (NPA) by the second respondent contrary to the Guidelines issued by the RBI/the first respondent herein and thereby to take necessary action against the second respondent herein.

For Petitioners in
all W.Ps. :: Mr.R. Thiagarajan
Learned Senior Counsel
for Mr.N.Premkumar

For 1st Respondent in
all W.Ps. :: Mr. Chevanan Mohan
Learned counsel
for M/s. King and Partridge

For 2nd Respondent in
all W.Ps. :: Mr.E.Om.Prakash
Learned Senior Counsel
for M/s. Ramalingam Associates.

COMMON ORDER

W.P.No. 17128 of 2019:

In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner had availed a term loan of Rs.23 crores from the second respondent on Lease Rental

Discounting Facility in the year 2010 by mortgaging a property to an extent of 48,000 sq.ft., in S.No. 329, in Velachery. The original title deeds have been deposited. The second respondent then enhanced the loan to Rs.27 crores. The period of repayment was 144 months. The moratorium was one year. It was stated that therefore, the repayment schedule was 132 months commencing from May 2018. It was stated that the loan was sanctioned on 22.05.2017. The first disbursement was on 24.05.2017 and the last disbursement was on 25.01.2018 and the moratorium period was for 12 months and therefore, the first Equated Monthly Installment should commence only from May 2018. It was however stated that the loan was declared as Non Performing Asset on 03.05.2018 declaring that the total outstanding was Rs.27,51,36,847.10. In this connection, the petitioner had given an objection letter on 08.05.2018. It was stated that declaring the account as Non Performing Asset is illegal and it was further stated that the accounts have been manipulated. It was stated that the first respondent had an obligation to examine into the complaint given. Further complaints were given on 27.05.2019 and on 28.05.2019. Since the first respondent had not taken any action, the Writ Petition had been filed.

W.P.No. 17134 of 2019:

2. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner had obtained a short term loan of Rs.3.20 crores for business activities by mortgaging the apartment bearing No.10/262, measuring 2560 sq.ft., in Regal Palm Garden, Velachery Tambaram Main Road, Velachery. It was stated that the loan was sanctioned on 19.12.2017. It was disbursed on 22.12.2017. The moratorium period was six months. It was therefore stated that the first installment fell due only on July 2018. However, the loan was declared as NPA on 04.05.2018 and the amount due was declared to be Rs.3,23,96,634/-. Claiming that the second respondent could not have declared the loan as NPA and should have granted the benefit of moratorium, complaints have been given to the first respondent on 27.05.2019 and again on 28.05.2019. Since the first respondent had not taken any action, the Writ Petition has been filed.

W.P.No. 17136 of 2019:

3. In the affidavit filed in support of the Writ Petition, it had been stated that the writ petitioner had obtained a short term loan of Rs.12 crores by mortgaging the Residential Apartments and depositing original documents. It was stated that the last disbursement of the loan was on 10.03.2017. It was sanctioned on 26.12.2016. It was stated that a moratorium

period of six months had been provided. However, the loan was declared as NPA on 04.05.2018 and a total sum of Rs.6,92,98,634/- was declared as outstanding. In this connection, complaining about the declarations of the loan as NPA and not granting the aforesaid of the moratorium period, the petitioners had given complaints to the first respondent on 27.05.2019 and 28.05.2019. Since no action had been issued, the Writ Petition has been filed.

4. The writ petitioners also filed additional affidavits pending the Writ Petitions. In the additional affidavits, they stated that they came to know from the first respondent website and press release dated 24.06.2019 that the first respondent had launched a Complaint Management System to facilitate members of the public to lodge the complaint to the first respondent against any of the entities regulated by the first respondent. A copy of the press release was enclosed along with the additional affidavit.

Common written submissions by the first respondent:

5. The first respondent had filed their written submissions. It had been stated that the complaints dated 27.05.2019 and 28.05.2019 have been disposed of by the reply of the first respondent dated 17.07.2019. It had been stated that the petitioners are primarily aggrieved declaration as Non Performing Assets. It was stated that the complaint mechanism is not a legal recourse mechanism and is purely a grievance redressal methodology. It had been stated that the Reserve Bank of India had taken up the issue with the second respondent and they had returned the title deeds. With respect to the declaration of the accounts as NPA, it had been stated that the same is pending, SARFAESI action before the Debt Recovery Tribunal and consequently, the first respondent cannot interfere with such issue. It had been further stated that this Court had narrowed down the issue to "whether the moratorium period has to be computed from the date of sanction of loan or from the date of disbursement of the last installment of loan.

6. It had been stated that with respect to the moratorium period of loan, there was no specific guidelines issued by the first respondent. However, the Master Circular dated 01.07.2015 permitted the banks where moratorium is available for payment of interest and stated that it was for the individual banks to lay out policies to decide the moratorium period. It was therefore stated that since the complaints had been addressed by the e-mail dated 17.07.2019, the Writ Petition had been dismissed.

Counter Affidavit of second respondent:

7. In the counter affidavit filed by the second respondent, it had been stated that the Writ Petitioner in W.P.No. 17128 of 2019, had sought for enhancement of Lease Rental Discount Facility from Rs.23 Crores to Rs.27 crores. This enhancement was given on the basis of letter of intent executed with M/s. Kauvery Medical Care, Trichy for leasing out the entire space on long term lease for 30 years. It was stated that the amount was agreed to be repaid in 132 monthly installments starting from May 2018. It was stated that the amount of Rs.27 crores was sanctioned but the monthly installments were not paid. It was stated that the petitioner company was classified as NPA on 24.05.2017. Thereafter, the entire loan had been assigned to M/s. Pegasus Asset Reconstruction Private Ltd., by Assignment Deed dated 27.09.2019. It was stated that proceedings under SARFAESI Act was also instituted and possession notice was also served and possession has also been taken. It was stated that the petitioner was a chronic defaulter.

8. With respect to W.P.No. 17134 of 2019, it was stated that the writ petitioner had sought a short term loan of Rs.3.20 crores. It was stated that the amount was sanctioned on mortgage of a flat. It was stated that the Equated Monthly Installments were not repaid. Therefore, the loan was declared as NPA. It was assigned to M/s. Pegasus Asset Reconstruction Private Ltd., who had also instituted SARFAESI proceedings and it was stated that possession has also been taken.

9. With respect to W.P.No. 17136 of 2019, it had been stated that the writ petitioner had availed a short term loan of Rs.12 crores and had mortgaged the properties towards the said loan. Since the amount was not repaid. It was classified as NPA on 24.05.2017 in accordance with Reserve Bank of India guidelines. It was stated that even in this case, SARFAESI proceedings had been instituted and possession had been taken.

10. Arguments in the Writ Petitions were heard along with W.P.No. 25226 of 2019 which Writ Petition had been filed challenging the order dated 17.07.2019 of the first respondent. In the counter filed to the Writ Petitions, the first respondent stated that even with respect to the complaints in the present writ petition, they have passed the order dated 17.07.2019. The order dated 17.07.2019 is extracted below:-

"CEPC, Chennai Wed, Jul 17, 2019 at 1.07 P.M.

Dear Sir,

Please refer to your complaint dated May 17, 2019 on the captioned subject. We advise that, we have taken up the matter

with the bank and bank has informed that they have adhered to our guidelines in classifying the group accounts of M/s. CeeDee Yes IT Park Private Limited as NPA by them in the financial year 2017-18 due to default in repayments in terms of RBI guidelines and the same was also mentioned by their Statutory Auditors in their LFAR.

2. Further, bank stated that they have released the subject documents of the property to you vide their letter dated July 08, 2019.

3. Hence, we regret to express that Reserve Bank of India do not intervene in the recovery process of the bank, and in their internal policy/commercial decision of the bank. In view of the above, we treat the complaint as dealt with and closed at out end.

R.Ravishankar
Assistant Manager
CEPC, RBI
Chennai."

11. It is claimed by the learned Senior Counsel for the writ petitioners that the order does not answer the issue, namely whether the moratorium period was to be calculated from the date of sanction of loan or from the date of disbursement of the last instalment of the loan. However, this has been clarified by the first respondent, who had stated as follows in their counter affidavit:-

"3. The respondent-1-RBI has not issued any specific guidelines with regard to moratorium period of loan. However, Reserve Bank of India issued Master Circular on prudential norms on Income Recognition and Asset Classification dated July 01,2015 wherein it has specifically allowed bank's finance given for Industrial Projects or Agricultural Plantation where moratorium is available for payment of interest, interest does not become overdue during the moratorium period and hence, do not become NPA. This Respondent-1-RBI would further highlight that the credit related issues are mostly deregulated. The RBI had advised Banks to have documents of investment policy, loan policy, loan recovery policy etc to be prepared and duly vetted by the bank's Board of Directors. The banks are required

to take credit decisions based on their internal assessment and the commercial viability of the loan within their Board approved policies and regulatory guidelines. It is submitted that the banks could decide on the commencement of moratorium period. It is for the second respondent bank to clarify the terms and conditions of the loan sanctioned agreed with the borrower.

4. In addition to the above, this respondent-1-RBI deems it necessary to bring to the attention of this Hon'ble Court that under Section 47A of the Banking Regulation Act, (B.R Act) it deals with the powers of the RBI to impose monetary penalties which could be imposed for specific defaults/contraventions made by a banking company referred to under Section 46(2), (3) and (4) which are applicable or invoked for specific violations/defaults committed under the provision of B.R.Act. This also includes violation/non-compliance of directions issued by Reserve Bank of India from time to time. Section 47A also stipulates the procedure to be followed for the adjudication of penalties. A separate grievance redressal mechanism under the Ombudsman Scheme and complaints handled by Consumer Education and Protection Cell (CEPC) are provided to redress grievances of banking customers. With reference to the complaint about non-return of title deeds, it is submitted that the bank has stated that petitioners have entered into Master Agreement dated December 23, 2014, wherein they have agreed in terms of Clause 10.1.t(vi) under default and termination clause, agreeing for liability on cross defaults. Therefore, this respondent, RBI is not in a position to intervene in such issues mutually agreed to by both parties."

12. The learned Senior Counsel for the petitioners and the

learned counsel for the first respondent had relied on the very same Judgements which they had relied on in W.P.No. 25226 of 2019.

13. Mr.R.Thiagarajan, learned Senior Counsel relied on (2002) 1 SCC 367 {Central Bank of India Vs. Ravindra} wherein the Hon'ble Supreme Court had stated as follows:-

"(5) The power conferred by Sections 21 and 35A of the Banking Regulations Act, 1935 is coupled with duty to Act. Reserve Bank of India is prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/circulars from time to time which, inter alia, deal with rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy. "

14. Reliance was also made on (2009) 8 SCC 257 {Sardar Associates Vs. Punjab Sind Bank} wherein the Hon'ble Supreme Court had, once again relied on the Judgment referred above, namely, (2002) 1 SCC 367 {Central Bank of India Vs. Ravindra} and had also again referred to paragraph No. 55(5) which has been extracted above.

15. The learned Senior Counsel also relied on (2016) 3 SCC

525 {Reserve Bank of India Vs. Jayantilal N.Mistry,} wherein it had been stated as follows in paragraph No. 62:-

"62. RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein."

16. Mr.Chevanan Mohan, learned counsel for RBI relied on (2003) 10 SCC 733 {Federal Bank Ltd., Vs. Sagar Thomas and Others}, wherein it had been stated as follows in paragraph Nos. 32 and 33:-

"32. Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired

in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed. "

17. Further reliance was placed on (2010) 8 SCC 110 {United Bank of India Vs. Satyawati Tondon and Others}, wherein it had been stated as follows in paragraph No. 55:

"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which

have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection. "

18. In view of the specific stand taken by the first respondent that each individual bank have their own guidelines with respect to the moratorium period and that the said term it is governed by a contract, it would highly be inappropriate on the part of this Court to examine the terms of the contract, its effect and such other details, which have to be established only after evidence is let in. The petitioners will have to examine the agreement under which they had availed the loans and had taken recourse under the said agreement. In a Writ Petition filed under Article 226 of the Constitution of India, this Court cannot examine these disputed facts.

19. It is an admitted fact that the loan share become Non Performing Assets as on date. There has been default in the repayment of the loan. Naturally, the second respondent has a right to initiate necessary proceedings. The proceedings are pending. It is for the Debt Recovery Tribunal to decide the issues. It is for the petitioners to raise those issues before the Debt Recovery Tribunal.

20. In view of the categorical stand taken by the first respondent that they cannot examine the complaints in view of the fact that the relief revolves around the interpretation of the agreement between the petitioners and the second respondent, I am afraid, I am not able to issue any Mandamus to the first respondent to compel them to examine the representation and pass orders.

21. In view of the said fact, the Writ Petitions are dismissed. No order as to costs. Consequently, connected Miscellaneous Petitions are also closed.

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Sd/-
Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

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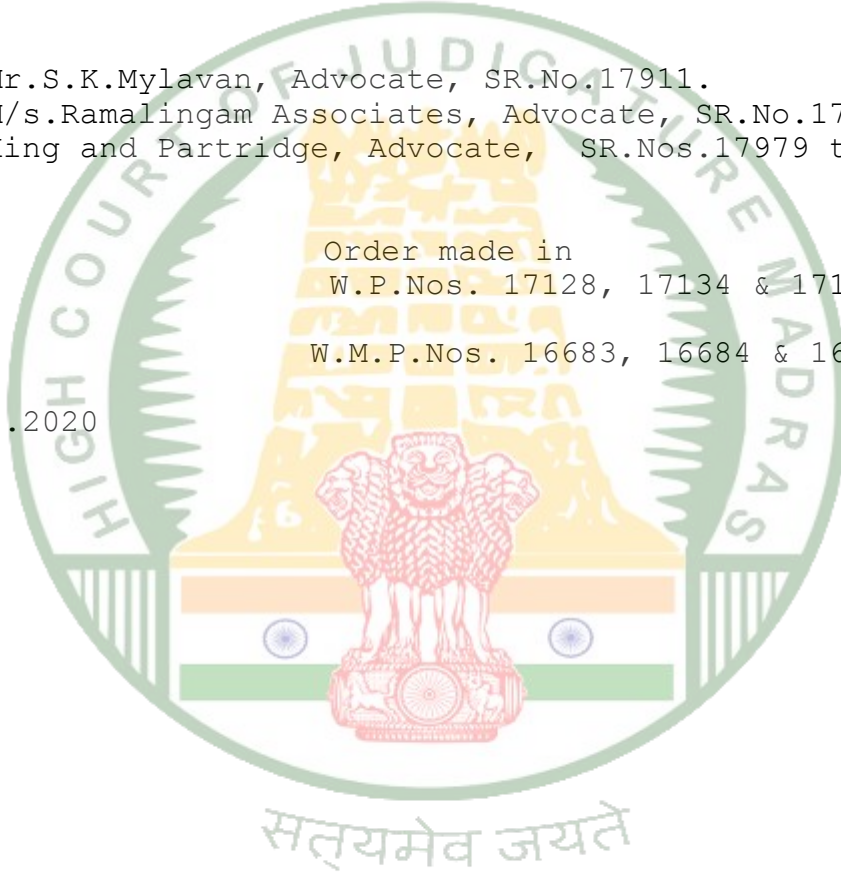
To

1. The Reserve Bank of India
Fort Glacis
No.16, Rajaji Salai
Chennai - 600 001.
2. IndusInd Bank Ltd.,
Old No. 115m 116, New No. 34,
G.N. Chetty Road,
T.Nagar,
Chennai - 600 017.

+3ccs to Mr.S.K.Mylavan, Advocate, SR.No.17911.
+2ccs to M/s.Ramalingam Associates, Advocate, SR.No.17971.
+3ccs to King and Partridge, Advocate, SR.Nos.17979 to 17981.

Order made in
W.P.Nos. 17128, 17134 & 17136 of 2019
And
W.M.P.Nos. 16683, 16684 & 16685 of 2019

KJ(CO)
CSR: 03.03.2020



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